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EXAMINER

KLINGER, SCOTT M

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 03/12/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,057

Applicant(s)

ELLIOTT, BRIG BARNUM

Examiner

Scott M. Klinger

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2153

DETAILED ACTION

Claims 1-27 are pending

Priority

No claim for foreign priority has been made. The effective filing date for the subject matter defined in the pending claims in the application is 22 December 2000.

Claim Objections

Claim 5 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2153

Claims 1-5, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowman-Amuah (U.S. Patent Number 6,606,660, hereinafter "Bowman-Amuah"). Bowman-Amuah discloses stream-based communication in a communication services patterns environment.

In referring to claims 1 and 5,

- Receiving information from a remote network node, the information including content and identification of a user:

"A user is identified in operation 15204. The user is associated with roles in operation 15206. In operation 15208, a user context instance is created upon successful identification of the user. The user context instance also includes information about the user including the roles."

- Bowman-Amuah, col. 273, lines 19-24

- Causing streaming of the content to a network receiver associated with the identified user:

"FIG. 20 depicts Streaming, in which a real-time data stream is transferred"

- Bowman-Amuah, col. 3, lines 18-19

In referring to claim 2,

- The content comprises at least one of audio data and video data:

"Audio/Video services allow nodes to interact with multimedia data streams. These services may be implemented as audio-only, video-only, or combined audio/video"

- Bowman-Amuah, col. 62, lines 7-9

In referring to claims 3 and 4,

- The audio data comprises a voice mail message:

Art Unit: 2153

"... an Internet telephony product can accept voice input into a workstation, translate it into an IP data stream, and route it through the Internet to a destination workstation, where the data is translated back into audio. Desktop Voice Mail--Various products enable users to manage voice mail messages using a desktop computer."

- Bowman-Amuah, col. 60, lines 22-29

In referring to claim 14,

- Providing user interface for submitting content:

"FIG. 1 is a schematic diagram of a hardware implementation of one embodiment of the present invention"

- Bowman-Amuah, col. 2, lines 47-48

(Figure 1, element 122 shows the user interface adapter)

- Transmitting the user interface instructions to the remote network node; receiving the information comprises receiving the information via the transmitted user interface instructions:

Figure 1, user interface adaptor 122 allows a user to input instructions, which are then sent to network 135 via communications adaptor 134

Claims 1, 6, 7, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Drosset et al. (U.S. Patent Number 6,662,231, hereinafter "Drosset"). Drosset discloses a method and system for subscriber-based audio service over a communication network.

In referring to claim 1,

- Receiving information from a remote network node, the information including content and identification of a user; causing streaming of the content to a network receiver associated with the identified user:

"A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server."

- Drosset, col. 2, lines 42-46

In referring to claim 6,

- Modifying a play list associated with the identified user to include a reference to the identified content, the play list identifying content for streaming delivery to the network receiver associated with the identified user:

"The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server ... The user may also maintain and modify customized playlists through the server and send playlists to other users."

- Drosset, col. 2, lines 38-52

In referring to claim 7,

- The play list identifies generic, shared content in addition to the received content:

"The present invention enables a user to create, modify or delete a playlist, where the user selects the audio files or controls the mix of audio files contained within the playlist. A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list."

- Drosset, col. 6, lines 60-67

In referring to claim 15,

- Play lists associated with different respective users, the play lists identifying content for streaming delivery to network receivers associated with the respective users:

"There are many different ways that a user can search for and find music to populate a playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one. A window appears at the user interface prompting the user to name the playlist."

- Drosset, col. 7, lines 1-7

(A system that allows a user to create a customized playlist inherently implies playlists associated with different users)

- Instructions for causing a processor to receive information from a remote network node, the information including content and identification of a user of the different respective users:

"A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server."

- Drosset, col. 2, lines 42-46

Art Unit: 2153

(A system that sends customized streaming content to a user inherently implies sending the identification of the user along with the content)

- Instructions for causing a processor to modify a play list associated with the identified user to include a reference to the received content:

Drosset, col. 6, lines 60-67 (quoted above)

(instructions for a processor to modify a playlist is inherent in a system that modifies a playlist)

In referring to claim 16,

- A stream generator for streaming content to the identified user based on the play list associated with the user.

Drosset, col. 2, lines 42-46 (quoted above)

(A stream generator is inherent in a system that generates a stream)

In referring to claim 17,

- Causing a processor to transmit user interface instructions to a remote network node, the user interface instructions receiving identification of content designated by a content submitter and transmitting the identification to the network server:

"A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list."

- Drosset, col. 6, lines 63-65

Claims 1, 6, 9-13, 18-20, and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Pezzillo et al. (U.S. Patent Number 6,434,621, hereinafter "Pezzillo"). Pezzillo discloses an apparatus and method of using the same for Internet and intranet broadcast channel creation and management

In referring to claim 1,

- Receiving information from a remote network node, the information including content and identification of a user; causing streaming of the content to a network receiver associated with the identified user:

"Yet another aspect of the invention is to integrate streaming audio and video media program files with live broadcast media in multiple webcast channels for Internet and intranet broadcasting.

...

Still another aspect of the invention is to provide unattended, remotely scheduled operation of multiple webcast channels for Internet and intranet broadcasting."

- Pezzillo, col. 3, lines 10-15

In referring to claim 6,

- Modifying a play list associated with the identified user to include a reference to the identified content, the play list identifying content for streaming delivery to the network receiver associated with the identified user:

"When a listener using a Web browser accesses an Internet radio station enabled by the system of the present invention, the playlist transferred over the Internet from the system to the listener's computer contains instructions which tell the player software on the listener's computer what to

Art Unit: 2153

play. The first entry in the playlist transferred to the listener may be an advertisement, and the second entry accessed by the listener may be one of several live streams."

- Pezzillo, col. 13, lines 14-22

In referring to claim 9,

- Receiving play scheduling information for the content; modifying the play list based on the received play scheduling information:

The channels can be run using a program schedule created by the webcaster, or by using the system to automatically determine a program schedule utilizing criteria provided by the webcaster."

- Pezzillo, col. 3, lines 64-67

In referring to claim 10,

- Receiving play scheduling information comprises receiving a number of times to stream the content:

In system that uses a program schedule to determine when specific streams will be transmitted, it is inherently implied that the number of times a stream will be played is included in said schedule

In referring to claim 11,

- Receiving play scheduling information comprises receiving a specified time to stream the content:

Art Unit: 2153

"A further aspect of the invention is to utilize time barriers to override a webcast channel's program schedule to force program files to run at particular times."

- Pezzillo, col. 3, lines 24-26

In referring to claims 12 and 13,

- Receiving play scheduling information comprises receiving a priority for streaming the content; based on the received priority of the streaming content, terminating streaming of currently streaming content and initiating streaming of the identified content

"A still further aspect of the invention is to utilize live barriers to override a webcast channel's program schedule to force a live events to broadcast at a particular times."

- Pezzillo, col. 3, lines 27-29

In referring to claim 18,

- Receive information from a remote network node, the information including content and identification of a specific user:

Pezzillo, col. 3, lines 10-15 (quoted above)

- Modify a play list associated with the identified user to include a reference to the content, the play list identifying content for streaming delivery to a network receiver associated with the identified user:

Pezzillo, col. 13, lines 14-22 (quoted above)

Art Unit: 2153

In referring to claim 19,

- Instructions for causing the processor to stream content to the network receiver associated with the identified user in accordance with the play list:

“Selecting HTML tools button 608 gives the user access to a HTML module for synchronizing HTML with the audio. Selecting playlists button 610 gives the user access to the playlist system, which gives the contents of the show now playing, and manages the music library and integrates compliance checking.”

- Pezzillo, col. 12, lines 43-48

In referring to claim 20,

- The play list includes at least one reference to content not designated for delivery to a specified user:

Pezzillo, col. 12, lines 43-48 (quoted above)

The show now playing is a broadcast that is not designated for delivery to a specific user

In referring to claim 22,

- Receive play scheduling information for the identified content; modify the play list based on the received play scheduling information:

Pezzillo, col. 13, lines 14-22 (quoted above)

In referring to claim 23,

- Provide user interface instructions for submitting content, transmit the user interface instructions to the remote network node:

"An Inventory feature provides access to and information about all programming that can be scheduled in the system. Within Inventory is a Contents Database, which is a database of show codes and of individual show files or show records that add individual program entries. Different transfer methods can be used to modify or add to the Contents Database."

- Pezzillo, col. 6, lines 20-25

In referring to claim 24,

- Receive input identifying content; receive input identifying a user to receive streaming delivery of the identified content; transmitting the received input identifying content and the received input identifying the user to a network server.

"The user interface to the system is a standard Web browser, such as Netscape Navigator or Microsoft® Internet Explorer. The current system will run under the Windows NT™ or UNIX®/Linux operating systems. The listener accesses the stations from a computer utilizing a standard Web browser and loaded with player software that can handle the streaming media formats."

- Pezzillo, col. 3, line 67 – col. 4, line 6

"Referring now to FIG. 12, the program to generate the graphical user interface that displays the program schedule as depicted in FIG. 3 is called in step 1200."

- Pezzillo, col. 17, lines 53-56

In referring to claim 25,

- Causing a processor to receive user input identifying play scheduling information for the content.

"If step 1312 determines that there are no more shows in the list of shows, then in step 1314 the graphic user interface is updated to display the list of compliant shows. Control then returns to

Art Unit: 2153

the add an entry program, where the user can now select a compliant show from the list of compliant shows to add to the program schedule."

- Pezzillo, col. 18, lines 44-49

In referring to claim 26,

- A graphical user interface defined by markup language instructions:

Pezzillo, col. 12, lines 43-48 (quoted above)

In referring to claim 27,

- A processor to transmit the identified content.

A computer system that transmits streaming content inherently implies a processor to transmit said content

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo.

Although Pezzillo shows substantial features of the claimed invention, including the method of claims 6 and 18 (see 102 rejections above), Pezzillo does not explicitly show determining whether a submitter of the content is authorized to submit content. Nonetheless this feature is

Art Unit: 2153

well known in the art and would have been obvious in the system disclosed by Pezzillo. Pezzillo discloses an inventory feature to add content to the database of audio files: *Pezzillo, col. 6, lines 20-25 (quoted above)*

Although Pezzillo does not explicitly state that only authorized users would be allowed to submit content to the database a person of ordinary skill in the art would have readily recognized the desirability and advantages of restricting access to the system. Figure 2 shows that the studios (200 and 216) are separate from the listeners (248), and it is implied that only the studios would be able to access and use the Inventory feature of Pezzillo. Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of implementing the system of Pezzillo so as to determine if a submitter of content is authorized to submit content, in order to prevent listeners from illegally adding copyrighted content.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Klinger whose telephone number is (703) 305-8285. The examiner can normally be reached on M-F 9:00am - 5:30pm.

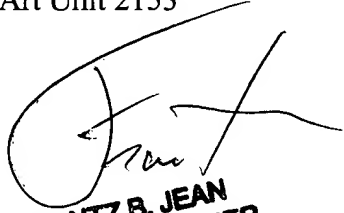
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2153

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott M. Klinger
Examiner
Art Unit 2153

smk



FRANTZ B. JEAN
PRIMARY EXAMINER